



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: July 21, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

THROUGH: Mindy T. Cummings, Manager *MTC*
Real Estate Management Division

FROM: Alex Feinman, Assistant Manager *AF*
Real Estate Management Division

CONTACT PERSON: **Mindy T. Cummings, Manager**

DIVISION: **Real Estate Management**
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Lease Agreement by and between City of Winter Park and Orange County, Florida, authorization for the Environmental Protection Division to execute amendments, and authorization for the Real Estate Management Division to exercise renewal options and furnish notices, required or allowed by the lease, as needed

PROJECT: Lake Island Estates / Winter Park AQM
1050 West Morse Boulevard, Winter Park, Florida 32789
Lease File #4002

District 5

PURPOSE: To continue to provide building space for an Environmental Protection Division air quality monitoring station.

ITEM: Lease Agreement
Cost: \$1 per year
Size: 588 square feet
Term: 5 years
Options: Two, 5-year renewals

BUDGET: Account No.: 1010-068-2426-3167

APPROVALS: Real Estate Management Division
County Attorney's Office
Capital Project Division
Environmental Protection Division
Facilities Management Division
Risk Management Division

REMARKS: County currently leases space from the City of Winter Park (City) for an air quality monitoring station within Martin Luther King, Jr. Park, in Winter Park, under a lease approved by the Board July 30, 1990 (Lease).

Due to the City's construction of a new City of Winter Park Library and Event Center and its use of the land under the current air quality monitoring station, City did not wish to renew the Lease. Since August 22, 2019, County has been a month-to-month tenant at the current location.

This Lease Agreement will provide for the Environmental Protection Division's use of a to be constructed air quality monitoring station for a term of five years, with two, five-year renewal options. This Lease Agreement also provides for City to construct the air monitoring station. County will reimburse City the lesser of the City's actual, reasonable design, engineering, permitting and construction costs, as approved by County (Development Costs), not to exceed \$135,000 for City's construction of the air monitoring station. Reimbursement of the Development Costs will be amortized over a five year period with no interest and paid by County in equal monthly payments as additional rent.

AUG 10 2021

Project: Lake Island Estates / Winter Park AQM
Lease File #4002

LEASE AGREEMENT

between

CITY OF WINTER PARK

and

ORANGE COUNTY, FLORIDA

THIS LEASE AGREEMENT (this "Lease Agreement") is made effective as of the date last executed below (the "Lease Effective Date") and entered into by and between CITY OF WINTER PARK, a Florida municipal corporation (the "City"), and ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida (the "County"). The City and County may be referred to individually as "Party" or collectively as "Parties."

RECITALS

A. This Lease Agreement is in regards to property consisting of approximately 588 square feet located at 1050 West Morse Boulevard, Winter Park, Florida 32789.

B. The County is currently in possession of an alternate building (the "Previous Leased Premises") pursuant to a Lease Agreement dated July 30, 1990 between the Parties, which terminated August 22, 2019 (the "Expired Lease").

C. The County is currently occupying the Previous Leased Premises beyond the expiration of the Expired Lease, and the City has extended the County's tenancy of such Previous Leased Premises on a month-to-month basis under the same terms and conditions of the Expired Lease, as noted in the Notice of Tenancy at Will dated August 1, 2019.

D. The County has agreed to relocate from the Previous Leased Premises to a new Leased Premises, which is also situated on property owned in fee simple by the City.

E. The City is willing to enter into a new lease with the County for the new Leased Premises, and the County has agreed to vacate the Previous Leased Premises and relocate to the Leased Premises.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this Lease Agreement, the value and sufficiency of which is acknowledged by the parties, the parties agree as follows:

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated as a material part of this Lease Agreement.

Section 2. Documents.

A. The documents that are incorporated by either reference or attachment and thereby form this Lease Agreement are:

1. This Lease Agreement;
2. **Exhibit A:** Legal Description of Property;
3. **Exhibit B:** Description and Sketch of the Leased Premises;
4. **Exhibit C:** Common Areas and Facilities;
5. **Exhibit D:** Conceptual Plans; and
6. **Exhibit E:** Maintenance Responsibilities.

Section 3. Property. The City is the fee simple owner of the property located at 1050 West Morse Boulevard, Winter Park, Florida (the "**Property**"), which is more specifically described in the *Legal Description of Property* attached to this Lease Agreement as **Exhibit "A."** The portion of the Property upon which the County, pursuant to this Lease Agreement, will have an exclusive leasehold interest (i.e. the Leased Premises) is more specifically depicted in the *Description and Sketch of the Leased Premises* attached to this Lease Agreement as **Exhibit "B."**

Section 4. Lease and License.

A. The City, in consideration of the payments or rents made to it by the County as described in this Lease Agreement, does hereby agree to:

1. Exclusively lease to the County the space as set forth in the *Legal Description of the Property* and depicted in the *Description and Sketch of the Leased Premises*, attached hereto and incorporated herein as **Exhibit "B"** (the "**Leased Premises**"), which Leased Premises is located on the Property for the limited purposes set forth herein; and
2. Grant to the County the non-exclusive right, license, and privilege of accessing and using the common areas and facilities located within and around the Leased Premises, as described in the *Common Areas and Facilities* attached to this Lease Agreement as **Exhibit "C"** to support the County's use of the Leased Premises for the limited purposes set forth herein.
3. The County's use of the Leased Premises shall be limited to the placement, maintenance, and operation of air quality monitoring and testing equipment and facilities ancillary thereto located at the Leased Premises.

Section 5. Term.

A. **Term.** The term of this Lease Agreement will commence on the first day of the first month following the Work Completion Date (the "**Lease Commencement Date**") and expire sixty (60) months thereafter ("**Lease Term**").

B. **Renewal.** County may renew this Lease Agreement for no more than two (2) additional terms not to exceed five (5) years each (the “**Renewal Term**”), by providing written notice to the City at least one hundred twenty (120) calendar days prior to the expiration of the Lease Term. The Lease Term and the Renewal Term, if exercised, are collectively referred to herein as the “**Term**”.

1. **Optional Renewal Term(s).** Following the County’s first Renewal Term, City and County may, but will not be required to, renew this Lease Agreement in five- (5) year consecutive terms (each a “Future Renewal Term”), which must be entered into by written agreement and executed by both Parties.

C. **Delegation.** By executing this Lease Agreement, the Orange County Board of County Commissioners hereby delegates to the Real Estate Division Manager, or his/her designee, the authority to execute any permitted renewals of this Lease Agreement.

Section 6. Rent.

A. **Rent.** The County shall make an annual payment of one dollar (\$1.00) in rent (“**Gross Rent**”) during the Lease Term. The Gross Rent is due to the City on the first business day of each lease year during the Lease Term. Gross Rent for any Renewal Terms will be an annual payment of one dollar (\$1.00). County has the right, but not the obligation, to remit payment for the entire applicable term in advance. Payments of Gross Rent are to be made payable to: The City of Winter Park, Parks and Recreation Department, 401 South Park Avenue, Winter Park, FL 32789.

B. **Sales and Use Taxes.** The County represents to the City that its rights of tenancy and occupancy under this Lease Agreement are exempt from the imposition of Florida State sales and use taxes. The County shall furnish to the City satisfactory proof of such exemption, and the County will not be liable for payment of such taxes for so long as the exemption is in effect. Regardless of the foregoing, County is liable to the City for any taxes assessed against the Leased Premises or underlying fee on account of the County’s use of the Leased Premises for purposes other than governmental, municipal, or public purposes as defined in the Florida Constitution.

Section 7. Development of the Property and Leased Premises.

- A. The City will cause final plans for the Leased Premises to be prepared in substantial conformance with the conceptual plans attached to this Lease Agreement as **Exhibit “D”** (the “**Conceptual Plans**”) and provide the final plans to the County for review within fifteen (15) days after the Lease Effective Date. The County will review the final plans and provide any comments to the City in writing within fifteen (15) days after receipt. If the County provides written comments, the County and City will diligently work in good faith to address those comments and approve the final plans. The Parties shall enter into an addendum to this Lease Agreement evidencing the approval of the final construction plans by the Parties (the “**Addendum**”) prior to commencement of construction of the Leased Premises. The parapet or screening wall shown in the Conceptual Plans will be constructed in accordance with the requirements of the Environmental Protection Agency, as may be amended from time to time.

- i. **Delegation.** By approving and executing this Lease Agreement, the Orange County Board of County Commissioners hereby delegates to the Environmental Protection Division Manager, or his/her designee, the authority to approve the final plans for the Leased Premises and execute the Addendum s.
- B. The City shall permit, engineer, and construct the Leased Premises in accordance with the final plans approved by the Parties and attached to the Addendum (the “**Final Plans**”).
- C. County shall reimburse City, as Additional Rent, up to a maximum amount of One Hundred and Thirty Five Thousand Dollars and No/100 (\$135,000.00) (the “**Reimbursement Cap**”), for City’s actual, reasonable design, engineering, permitting, and construction costs (the “**Development Costs**”) incurred to develop and prepare the Property and Leased Premises for County’s use in accordance with the Final Plans (the “**Development Work**”). The date on which the Development Work is completed to the County’s satisfaction and County gives City written notice of County’s acceptance of the Development Work will be referred to herein as the “**Work Completion Date**”.
- D. Following the completion of the Development Work, as evidenced by receipt of (i) applicable permits, (ii) certificate of occupancy, (iii) other necessary governmental approvals, (iv) a certificate from the City’s engineer of record certifying that the Development Work has been completed in accordance with the Final Plans, and (v) written notice of completion from City to County, City shall provide County with written notice of the Development Costs together with: (i) copies of draw requests, proof of payment, and/or invoices evidencing the City’s payment of Development Costs paid by the City; (ii) applicable lien releases from the City’s contractors and subcontractors; and (iii) such other documentation as may be reasonably necessary or reasonably requested by the County to substantiate the amount of Development Costs claimed by City. County’s review of the Development Costs must be performed in good faith, and the County’s approval of claimed Development Costs may not be unreasonably withheld, conditioned, or delayed.
- E. County shall reimburse City for the lesser of the Reimbursement Cap or the County-approved Development Costs, which Development Costs will be amortized over a period of five (5) years with no interest and paid by County in equal monthly payments (the “**Monthly Development Payment**”) **throughout the first five years of the Term.** Prior to the Lease Commencement Date, City and County will execute a separate written instrument setting forth the Monthly Development Payment and its calculation, including, without limitation, a statement of the County-approved Development Costs and whether the Reimbursement Cap was applicable. County’s Real Estate Division, acting through its Manager or such Manager’s designee, is authorized to execute such written instrument on behalf of County, and neither City nor County may unreasonably withhold, condition, or delay its approval of such written instrument.
- F. County may, but will not be required to, prepay the whole unpaid balance for the Development Work at any time without premium or penalty.

G. If the County terminates this Lease Agreement prior to the natural expiration date of this Lease and pursuant to Section 15.A. (termination for convenience), the unpaid balance of the Development Costs as of the lease termination date will be due and payable by the County to the City upon such termination of this Lease Agreement. At such time, the City shall provide the County with an invoice for the unpaid balance of the Development Costs due and owing by the County upon the termination of this Lease Agreement, and County shall pay the same within sixty (60) days after receipt of the invoice. If the County terminates this Lease Agreement pursuant to Section 15.B. as a result of the City's failure to cure a default, the County will not be liable for any outstanding balance of the Development Costs. If the City terminates this Lease Agreement pursuant to Section 15.B. as a result of the County's failure to cure a default, the unpaid balance of the Development Costs as of the lease termination date will be due and payable by County to the City upon the termination of this Lease Agreement; at which time, City shall provide County with an invoice for the unpaid balance of the Development Costs due and owing by County, and County shall pay the same within forty-five (45) days after receipt of the invoice

Section 8. Care, Repair, Utilities, and Cleanliness.

A. **Care of Leased Premises.** Upon completion of the Development Work, the County will be responsible for the upkeep, operation, maintenance, repair, and janitorial services with regard to the interior and exterior elements of the Leased Premises, including the maintenance of any utilities and HVAC systems. Regardless of the foregoing, the County, prior to commencing the construction or installation of any accessory structures on the property or any improvements to the exterior of any building or structures situated on the Leased Premises, (other than air quality monitoring and testing equipment and facilities) including, but not limited to, paint color, roofing, walls, or exterior cladding, must obtain written consent from the City to install or construct any such accessory structures or make any exterior improvements, it being understood that the Leased Premises must be kept in conformity with the City's aesthetic goals for the surrounding area. The City will provide written consent within 30 days of receiving a request for alteration. The Parties shall comply with, fulfill, and be responsible for all costs and maintenance, operations, system repair, and janitorial services associated with their respective responsibilities to the Leased Premises as described in the *Maintenance Responsibilities* attached to this Lease Agreement as **Exhibit "E."** If the County fails to comply with and fulfill its responsibilities regarding the maintenance of the Leased Premises as described in the *Maintenance Responsibilities*, the City may meet those obligations on behalf of the County.

1. Prior to exercising its right under this provision to meet the County's obligations, the City shall provide five (5) business days written notice to the County in order to provide the County with an opportunity to correct any such failure.
2. The City reserves the right to invoice the County for the fair market value of any action taken, or service provided, by the City under this provision.

B. **City's Responsibilities.** Notwithstanding the obligations set forth in the *Maintenance Responsibilities*, the City will be responsible for landscaping and grounds maintenance, any

property and ad valorem taxes that may accrue, and the cost of insuring those elements of the Leased Premises owned by the City.

C. **Utilities of Leased Premises.** The County shall promptly pay all telephone utility bills for the Leased Premises, which service the County shall cause to be installed at its own expense. The County shall pay its proportionate share, which the parties agree is five-percent (5%), of all charges for water, sewer, gas, electricity, light, alarms, and other utilities jointly metered with other premises in the Property. The County shall be responsible for its proportionate share of required maintenance of any joint meters. Regardless of the foregoing, the City will be installing, at the City's expense, a separate electrical meter(s) for the facilities located on the Leased Premises, and the County will be solely responsible for any utilities charges incurred in connection with such meter(s) as contemplated in Exhibit E – Maintenance Responsibility. The City is not liable for damages or otherwise to the County if the furnishing of any utility or any other services to the Leased Premises (regardless of whether furnished by City) is interrupted, reduced, or altered by any cause whatsoever unless such is due to the gross negligence of the City.

D. **Hazardous Materials.** The County will not improperly or unlawfully store, handle, release, or dispose of any refuse, trash, or hazardous materials or contaminants in or on the Leased Premises or on the Property. The County shall immediately notify the City and any and all appropriate governmental agencies and authorities having jurisdiction if a release of such materials occurs, shall take complete corrective action to clean and remove the material and restore the Leased Premises in compliance with procedures established by such authorities, and shall provide appropriate evidence of compliance. Such corrective action will be at the County's own expense.

Section 9. Lease Restrictions.

A. **Permitted Use.** The County's use of the Leased Premises is limited to the purpose(s) contemplated by this Lease Agreement which is the placement, maintenance, and operation of air quality monitoring and testing equipment and facilities (the "**Permitted Use**"). The County may use the Leased Premises and the Property for purposes related to the Permitted Use with City's consent, which will not be unreasonably withheld or delayed. The Leased Premises may not be used for any illegal purposes, to create any nuisance or trespass, or so as to jeopardize the insurance coverage for or increase the rate of insurance on the Property.

B. **Fixtures and Alterations.** The County may not alter or make additions to the Leased Premises, nor attach or affix any article to the exterior of any buildings or structures located on the Leased Premises, (other than air quality monitoring and testing equipment and facilities) nor permit any sound device that could be considered loud or annoying, or in any manner deface the Leased Premises, without the written notice by the County to the City or as provided for in this Lease Agreement. The County may not build, construct, change, modify, or otherwise make any interior improvements to any building or structure on the Leased Premises, or attach any fixtures in or to the Leased Premises (other than air quality monitoring and testing equipment and facilities) absent an agreement in writing as between the parties. Regardless of the foregoing, the County may make interior improvements or replace failed fixtures absent such an agreement where required due to exigent circumstances, provided that such improvements are functionally

equivalent to the pre-existing improvements, do not unduly interfere with existing improvements, and are required to replace or otherwise repair the failed fixture or improvements.

C. **Signs.** The County may not install or locate signs on any part of the Leased Premises without first obtaining the City's written consent, which consent may not be unreasonably withheld or delayed. Any signs installed by the County with the City's permission must be maintained in good repair and must be removed at the County's expense prior to the expiration of the Term unless excused in writing by the City, and any building or grounds damage caused by the sign shall be restored by the County at its own expense prior to the expiration of the Term.

D. **City's Right of Entry.** The City, including any authorized representatives of the City and upon at least seventy-two (72) hours' notice to the County, has the right to enter the Leased Premises: (1) to determine whether the Leased Premises are in good condition and whether the County is complying with its obligations under this Lease Agreement; or (2) to make repairs to the Leased Premises if not performed by the County. The City may disregard such notice requirement in emergency situations only. The City will not be liable in any manner for any inconvenience, disturbance, or nuisance arising out of the City's entry on the Leased Premises, except for damage to County-owned property resulting from the acts or omissions of City or its authorized representatives.

E. **Laws, Regulations, Permitting, and Licensing.** The parties must comply with all Federal, State, and local ordinances, rules, and regulations in any way related to the Permitted Use of the Leased Premises or any associated operations. Additionally, the County shall comply with all reasonable requests made by the City for the protection, welfare, and orderly management of the Leased Premises and the Property. Nothing in this Lease Agreement may be construed to relieve either Party of its respective obligations to comply with all applicable provisions of the Orange County Code or Winter Park Code of Ordinances, or to obtain federal, state, county, or other permits, as applicable. The Parties shall maintain all required permits and licensing needed for operation of the Property and Leased Premises.

Section 10. Access to Property and Leased Premises.

A. **Access to Leased Premises.** The County has unlimited and exclusive access to the Leased Premises during the Lease Term. The City has no liability to the County, its employees, volunteers, agents, invitees, or licensees for losses due to theft or burglary (unless caused by the gross negligence of the City) or for damages done by unauthorized persons on the Leased Premises, and the City is not required to insure against any such losses. The County shall cooperate fully in the City's efforts to maintain security within the Leased Premises and follow all regulations promulgated by the City with respect thereto.

B. **Parking.** The City hereby grants to the County non-exclusive use of the general parking facilities for County personnel at a level of use in accordance with the County's past use and practice under the Existing Lease, as further described in *Common Areas and Facilities* attached to this Lease Agreement as **Exhibit "C."** The City shall ensure that parking is available to the County, its employees, volunteers, and clients during the times that the County operates at the Leased Premises. Said parking includes, but is not limited to, the County's trailers and vehicles.

If the City installs electric vehicle charging stations into the general parking facilities (outlined in **Exhibit "C"**), the County will be permitted non-exclusive use of such charging stations. The City shall maintain and insure the Common Areas and Facilities. The parking of County vehicles at or near the Leased Premises is restricted to actual parking spaces intended for such use and may not be done in such a manner so as to interfere with City operations or ingress or egress from the Property.

C. **Keys to Leased Premises.** The City shall ensure that the County has access to the Leased Premises by providing the County with any necessary keys, codes, or other tools or information necessary to access the Leased Premises no later than the Lease Effective Date. The City will be responsible for the changing of locks for the Leased Premises and any associated costs. However, if the County requests a changing of the locks, the County will be responsible for such changes and any costs associated therewith. Per United States Environmental Protection Agency guidelines, the City will provide the County with a list of all City personnel with access to any such keys, codes, or other access tools or information.

Section 11. Interruption of Service.

A. Force Majeure.

1. The City does not warrant that any services to be provided by the City, or any third party, will be free from interruption due to unavoidable delays or causes beyond the City's reasonable control.
2. Unavoidable delays are deemed to include delays in the performance of any of the obligations under the terms of this Lease Agreement resulting from acts of God, strikes, lockouts, or other disturbances; acts of civil disobedience; orders of any kind of the government of the State of Florida or the United States of America or any of their departments, agencies or officials, or any civil or military authority, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.
3. In the event of unavoidable delays in the making of repairs by the City or a third party, the City will notify the County in writing within ten (10) business days of such unavoidable delay(s) of: (1) the nature of the unavoidable delay; and (2) the anticipated date upon which such repairs shall be completed. If the City provides such notice to the County, the unavoidable delay may not be deemed an eviction or disturbance of County's use and possession of the Leased Premises, nor render City liable to the County for damages.

4. If such unavoidable delay results in the County being unable to occupy the Leased Premises for the Permitted Use for a period longer than sixty (60) calendar days, the County may voluntarily terminate this lease without any further obligations to the City.

B. Loss of Use.

1. If the Leased Premises becomes partially or wholly untenable through no fault of the County and due to causes not otherwise excused by the Force Majeure provision above, the City has the obligation to repair the Leased Premises to the same or substantially similar condition as they were received on the Lease Effective Date within a reasonable period of time. If the County believes that the City is not upholding their obligations to repair the Leased Premises, the County must notify the City of such in writing.
2. The Parties shall meet and mutually agree upon a date, in writing, that the Leased Premises will be restored to a wholly tenable condition that is in a same or substantially similar condition to the Leased Premises as they were received on the Lease Effective Date (“**Expected Tenable Date**”). Both parties agree that they shall act in good faith in the establishment of a reasonable Expected Tenable Date.
3. If the Parties cannot mutually agree upon an Expected Tenable Date in writing, the default Expected Tenable Date will be thirty (30) calendar days from the date of the City’s receipt of the County’s notice of untenability.

Section 12. Insurance.

A. Without waiving its sovereign immunity or the limitations of Section 768.28 of the Florida Statutes, the County shall procure and maintain at its expense throughout the term of this Lease Agreement the following insurance coverage. Coverage may be through a self-insurance program or commercial insurance which the City finds acceptable.

1. Commercial General liability insurance in an amount not less than \$200,000.00 (two hundred thousand) to cover the operations of the County and any claims associated with liability for injury and/or death of any persons or persons and for damage to personal property occasioned by or arising out of any construction, condition, use or occupancy of the Leased Premises.
2. All-risk property insurance in an amount not less than the full replacement value of the final completed building, the County’s furniture, equipment, supplies and any other property owned, leased, held or possessed by the County. Notwithstanding the foregoing, until issuance of a certificate of occupancy, City or City’s contractor will insure the building during construction under a builders’ risk policy.

B. The County shall provide City with a certificate(s) of insurance prior to the Lease Commencement Date and at every renewal throughout the term of this Lease Agreement. All commercial policies must provide that the insurer will not cancel, alter, or allow expiration or other termination thereof without at least thirty (30) days prior written notice from said insurer to City. The foregoing insurance requirements may be met with excess or umbrella policies providing functionally equivalent coverage or, with the written approval of the City's risk manager, a self-insured retention program providing functionally equivalent coverage.

Section 13. Indemnification.

A. To the fullest extent permitted by Section 768.28, Florida Statutes, each Party (the "Indemnifying Party") shall release, defend, indemnify, and hold harmless the other Party, its officials and employees from all losses and expenses, claims and damages, demands, suits or other actions or any liability attributable to the Indemnifying Party's negligent acts or omissions or those of its officials and employees acting within the scope of their employment or arising from the Indemnifying Party's negligent performance associated with the operation, care, use and maintenance of the Leased Premises. Nothing herein is intended to act as a waiver of the Parties sovereign immunity pursuant to Section 768.28 of the Florida Statutes, and regardless of anything set forth in this Lease to the contrary, nothing in this Lease may be construed or otherwise interpreted as requiring one party to indemnify or insure the other party for the other party's negligence in contravention of § 768.28(19), Florida Statutes (2020).

Section 14. Party Relationship. The City's relationship with the County will be that of landlord and tenant, respectively. Nothing contained in this Lease Agreement may be interpreted or construed as creating any partnership, association, joint venture, fiduciary or agency relationship between the County and the City. The County's employees and volunteers are not, nor may they be construed or held as, employees or agents of the City for any purpose, including any Worker's Compensation purposes. Neither party has the power or authority to bind the other in any promise, agreement, nor representation other than as specifically provided for in this Lease Agreement.

Section 15. Termination.

A. **Termination for Convenience.** County has the right to terminate this Lease Agreement by providing six (6) months' advance written notice to City at any time during the Term or Renewal Terms of this Lease Agreement.

B. **Termination for Cause.** The failure of either Party, including its employees or contractors, to comply with any covenant or condition of this Lease Agreement will constitute a breach of this Lease Agreement, rendering the breaching party in default. In the event of default by either Party, the non-defaulting party will provide the defaulting party with written notice of default specifying the nature of the default and an opportunity to cure. The defaulting party must cure the default within thirty (30) calendar days from the date the defaulting party receives notice, or within a reasonable timeframe as mutually agreed upon by both parties in writing. If the defaulting party fails to cure the breach to the non-defaulting party's satisfaction within the aforementioned timeframe, the non-defaulting party may terminate this Lease Agreement for cause by providing the defaulting party with a ninety (90) calendar day notice of termination.

C. **Delegation.** By execution of this Lease Agreement, the Orange County Board of County Commissioners hereby delegates to the Real Estate Division Manager, or their designee, the authority to execute any termination notice to this Lease Agreement (except for termination notices provided pursuant to Section 15.A. that would result in an obligation of the County to reimburse the City for unpaid Development Costs).

D. **Eminent Domain.** If the whole or any part of the property of which the Leased Premises is a part, shall be taken by any public authority under the power of eminent domain, so that the County cannot continue to operate in the Leased Premises, then the term of this Lease shall cease as of the day possession is taken by such public authority. The County may seek apportionment of the amount awarded for any taking under the power of eminent domain; however, in no event may such apportionment claim exceed the amount paid by the County to reimburse the City for its Development Costs pursuant to this Agreement.

Section 16. Redelivery of Leased Premises. The County shall, on the expiration or earlier termination of this Lease Agreement, deliver the Leased Premises in as good of order and condition as received on the Lease Effective Date, ordinary wear and tear excepted. The County shall promptly surrender all keys for the Leased Premises to the City and may not keep copies of any such keys.

Section 17. Notices. Notices to either party provided for in this Lease Agreement will be sufficient if sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the following addressees or to such other addressees as the parties may designate to each other in writing from time to time:

To City: City of Winter Park, City Hall
Attn: City Manager
401 S Park Avenue South
Winter Park, Florida 32789

To the County: Orange County Administrator
Orange County Administration Building
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801

AND

Orange County Real Estate Management
Attn: Manager
400 East South Street, 5th Floor
Orlando, Florida 32801

AND

Orange County Environmental Protection Division

Attn: Manager
3165 McCrory Place, Suite 200
Orlando, FL 32803

Section 18. General Provisions.

- A. **Recording.** Neither party may record this Lease Agreement in the official public records of Orange County, Florida. Doing so would place such party in breach of this Lease Agreement and provide the other party with the option to terminate this Lease Agreement without penalty or further cost or expense.
- B. **Warranty of Quiet Enjoyment.** The County, upon keeping and performing its covenants under this Lease Agreement, will peacefully and quietly hold, occupy, and enjoy the Leased Premises during the Lease Term and Renewal Terms without any let, hindrance, or molestation by City, or any persons lawfully claiming under the City.
- C. **Use of County / City Logos.** Neither party may use of any of the other party's emblems, logos, or identifiers without written permission from the other party.
- D. **Holdover.** If the County remains in the Leased Premises beyond the expiration or earlier termination of the Lease Term, or applicable Renewal Term, without a written agreement extending or renewing the tenancy, then the tenancy will be extended under the same terms and conditions of this Lease Agreement ("**Holdover Tenancy**"). If the City wishes to end the Holdover Tenancy, then the City shall provide the County sixty (60) calendar days' written notice to vacate the Leased Premises. In such event, any rent owed by the County will be prorated from the date that the County receives the sixty (60) calendar day notice to vacate to the date that the County fully vacates the premises.
- E. **Radon Gas – Notice to Prospective Tenant.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit, pursuant to Section 404.056(8), Florida Statutes.
- F. **Mold – Notice to Prospective Tenant.** The County agrees to hold City harmless and release the City from any liability if any mold contaminants are discovered on the Leased Premises. The County understands mold is a naturally occurring microbe and that mold should pose no health threat unless concentrated in high level in a living environment. City agrees that in the event mold-like contamination is discovered, this condition will be reported to the County.
- G. **No Waiver of Sovereign Immunity.** Nothing contained in this Lease Agreement may constitute, or be in any way construed to be, a waiver of the County's or the City's sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes.

- H. **Assignments and Successors.** Each party binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Lease Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Lease Agreement. The parties deem the services to be rendered pursuant to this Lease Agreement to be personal in nature. As such, neither party may assign, sublet, convey, or transfer its interest in this Lease Agreement without the written consent of the other, which consent will be in the sole determination of the party with the right to consent.
- I. **Waiver.** No waiver of any of the covenants and agreements contained in this Lease Agreement or of any breach of said covenants and agreements may be interpreted or construed as constituting a waiver of any other subsequent breach of such covenants and agreements or to justify or authorizing the non-observance at any time of the same or of any other covenants and agreements.
- J. **Remedies.** No remedy in this Lease Agreement conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy is cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy under this Lease Agreement may preclude any other or further exercise of any right, power, or remedy.
- K. **Liability.** Neither party will be liable to the other for any special, consequential, incidental, punitive, or indirect damages arising from or relating to this Lease Agreement or any breach by the other party of this Lease Agreement, regardless of any notice of the possibility of such damages.
- L. **Governing Law.** This Lease Agreement, and any and all actions directly or indirectly associated with this Lease Agreement, will be governed by and construed in accordance with the internal laws of the State of Florida, without reference to any conflicts of law provisions.
- M. **Venue.** For any legal proceeding arising out of or relating to this Lease Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida. If any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.
- N. ***Intentionally left blank.***
- O. **Jury Waiver.** Each party to this Lease Agreement hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Lease Agreement.
- P. **Attorneys' Fees and Costs.** Unless explicitly stated otherwise in this Lease Agreement, the Parties will each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Lease Agreement and any litigation that arises either directly, or indirectly, from this Lease Agreement.

- Q. **No Representations.** Each party represents that it has had the opportunity to consult with an attorney, and has carefully read and understood the scope and effect of the provisions of this Lease Agreement. Neither party has relied upon any representations or statements made by the other party regarding this Lease Agreement that are not specifically set forth in this Lease Agreement.
- R. **Headings.** The headings or captions of articles, sections, or subsections used in this Lease Agreement are for convenience and reference only and are not otherwise intended to define or limit the contents of such articles, sections, or subsections, nor are they to affect the construction of or to be taken into consideration in interpreting this Lease Agreement.
- S. **Survivorship.** Those provisions, which by their nature are intended to survive the expiration, cancellation, or termination of this Lease Agreement, including, by way of example only, the indemnification and public records provisions, will survive the expiration, cancellation, or termination of this Lease Agreement.
- T. **Authority of Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by its respective governing board to enter into and perform this Lease Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Lease Agreement as stated.
- U. **No Third Party Beneficiaries.** Nothing in this Lease Agreement, express or implied, is intended to, or confers, upon any person, other than the parties, including the respective successors and permitted assigns of the parties, any legal or equitable right, benefit, or remedy of any nature under or by reason of this Lease Agreement.
- V. **Severability.** The provisions of this Lease Agreement are declared by the parties to be severable. However, the material provisions of this Lease Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Lease Agreement. Therefore, if any material term, provision, covenant, or condition of this Lease Agreement is held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.
- W. **Written Modification.** Unless otherwise explicitly stated in this Lease Agreement, no modification of this Lease Agreement may be binding upon any party to this Lease Agreement unless reduced to writing and signed by a duly authorized representative of each party to this Lease Agreement.

Section 18. Entire Lease Agreement. This Lease Agreement and any attached or incorporated documents set forth constitute the entire agreement and understanding of the parties with respect to the subject matter of this Lease Agreement. This Lease Agreement supersedes any

Project: Lake Island Estates / Winter Park AQM

Lease File #4002

and all prior leases, agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this Lease Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Project: Lake Island Estates / Winter Park AQM
Lease File #4002

IN WITNESS WHEREOF, the County and City have caused this Lease Agreement to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Lease Effective Date.

“City”

CITY OF WINTER PARK, FLORIDA

By: 

Phil Anderson
Mayor

Date: July 28, 2021

ATTEST:

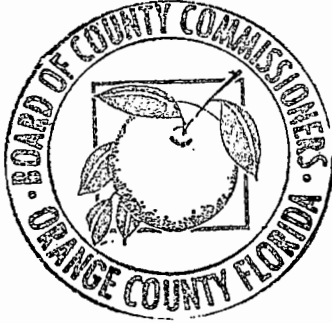


By: City Clerk

Date: July 28, 2021

Project: Lake Island Estates / Winter Park AQM
Lease File #4002

IN WITNESS WHEREOF, the County and City have caused this Lease Agreement to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Lease Effective Date.



“County”
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
Jerry L. Demings
Orange County Mayor

Date: 16 August 2021

ATTEST: Phil Diamond, CPA, Comptroller
As Clerk of the Board of County Commissioners

Heidi Lee
Deputy Clerk

Date: AUG 17 2021

Project: Lake Island Estates / Winter Park AQM
Lease File #4002

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

City is fee simple owner of the Property described below. The Property contains the Leased Premises, which is described in Exhibit B.

A. Description of the Property

LAKE ISLAND ESTATES M/95 ALL BLKS 3 4 6 TO 9 & 11 TO 13

B. Sketch of the Property



EXHIBIT A

EXHIBIT B
LEGAL DESCRIPTION OF LEASED PREMISES

The Leased Premises

A. Description of the Leased Premises

COMMENCE AT THE SOUTHWEST CORNER OF LOT 12, BLOCK 4, LAKE ISLAND ESTATES, AS RECORDED IN PLAT BOOK "M", PAGE 95, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N00°42'39"W ALONG THE EAST RIGHT OF WAY LINE OF HARPER STREET A DISTANCE OF 389.50 FEET; THENCE LEAVING SAID EAST RIGHT OF WAY LINE RUN N89°17'21"E 183.56 FEET FOR A POINT OF BEGINNING; THENCE RUN N90°00'00"E 22.33 FEET; THENCE S00°00'00"E 26.33 FEET; THENCE N90°00'00"W 22.33 FEET; THENCE N00°00'00"E 26.33 FEET TO THE POINT OF BEGINNING.
CONTAINS THEREIN 588 SQUARE FEET.

The Leased Premises is an area approximately 588 square feet located at 1050 West Morse Boulevard, Winter Park, Florida 32789.

B. Sketch of the Leased Premises



EXHIBIT C COMMON AREAS AND FACILITIES

A. Landlord hereby grants to Tenant the following non-exclusive rights as appurtenances to the Facility, Leased Premises, or both, as applicable:

- i. The right of access directly to the Leased Premises through the main entrance of the Property;
- ii. The right to use the restrooms in any building near the Leased Premises;
- iii. The right to park up to 2 vehicles in the main parking lot adjacent to the Leased Premises; and
- iv. The right to park up to 2 vehicles in the electric vehicle charging stations (if applicable) in the main parking lot adjacent to the Leased Premises

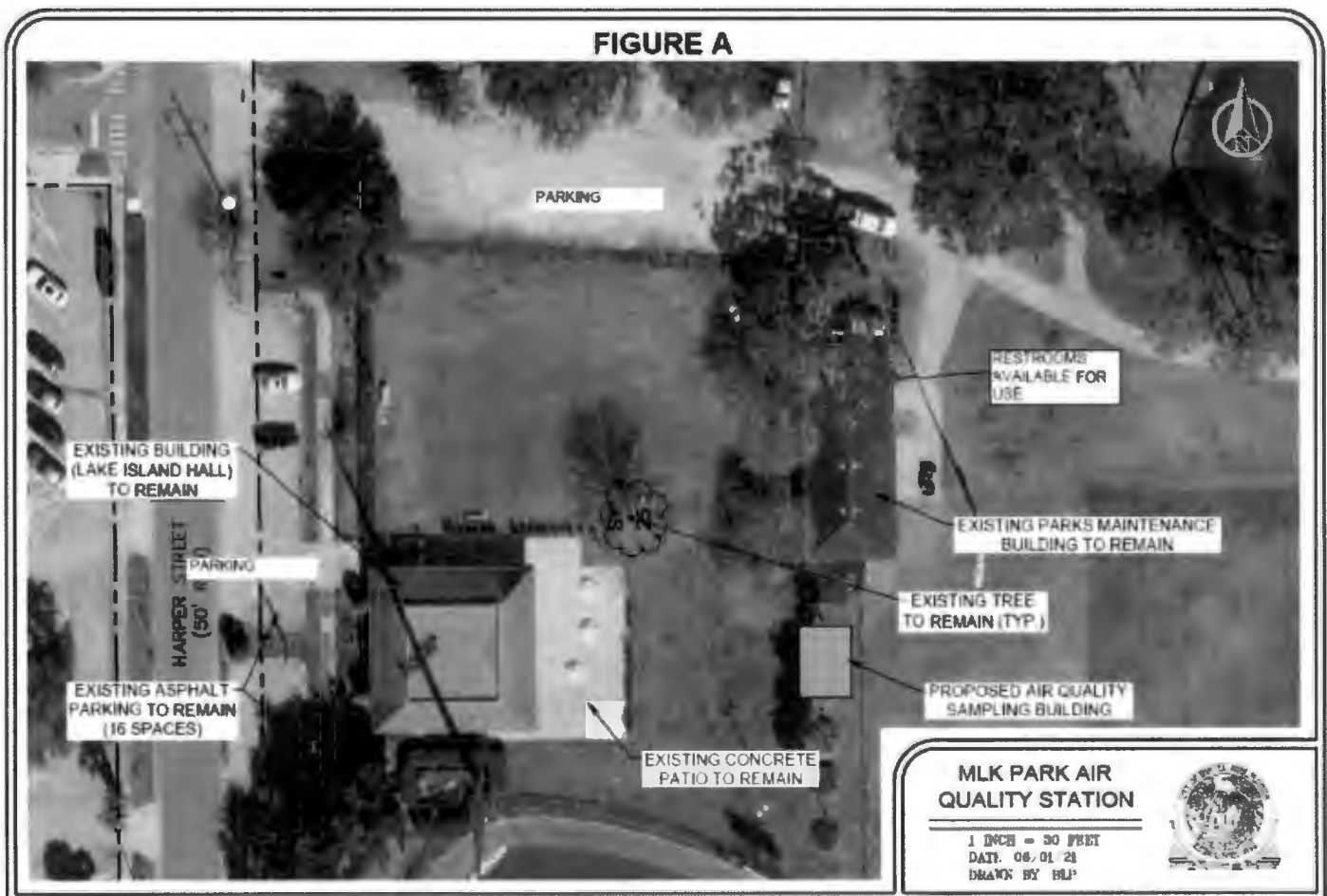
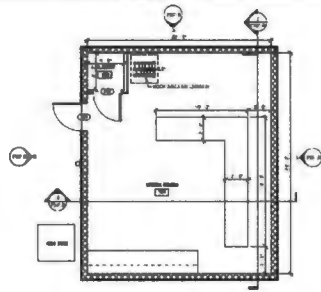
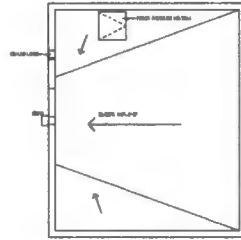


EXHIBIT D CONCEPTUAL PLANS

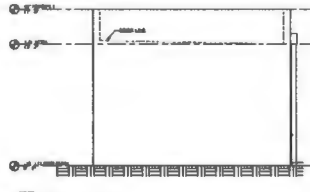


1 FLOOR PLAN
10'-0" 11'

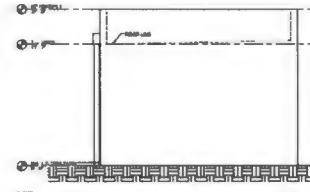


2 ROOF PLAN
10'-0" 11'

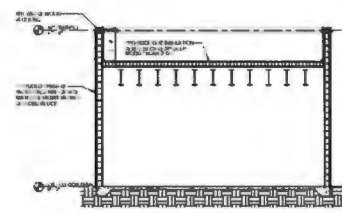
THIS PLAN IS PRELIMINARY AND SUBJECT TO CHANGE WITHOUT NOTICE. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES.



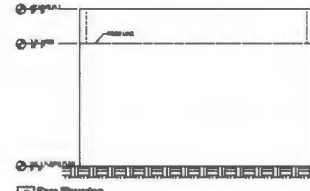
3 North Elevation
10'-0" 11'



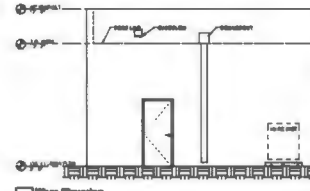
4 South Elevation
10'-0" 11'



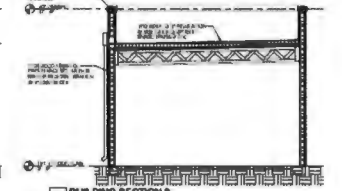
7 BUILDING SECTION
10'-0" 11'



5 West Elevation
10'-0" 11'



6 East Elevation
10'-0" 11'



8 BUILDING SECTION 2
10'-0" 11'

DATE: 10/15/10

PROJECT DESCRIPTION:
**MILK AIR QUALITY
BLDG**
PRELIMINARY

480 Highway B, Winter Park, FL 32789

PSP-A
PSP & ASSOCIATES, INC.
ARCHITECTS

**EXHIBIT E
 MAINTENANCE RESPONSIBILITY**

City and the County acknowledge and agree the following will constitute Maintenance and Repair responsibilities regarding the Leased Premises:

	City or County	Comments
Cabinets, Vanities, and Countertops	County	
Carpet and/or Tile (incl. Deep Cleaning, Repair, and Replacement)	County	
Changes / Additions to Building	City	
Common Area Maintenance	City	
Dumpsters / Trash	City	
Elevators	N/A	
Exterior Cleaning	County	
Exterior Doors (incl. Closure Devices, Frames, Molding, etc.)	County	
Exterior Electrical: Meter Base, Outlets, Switches, etc.	County	
Exterior Lighting (Pole and Building Fixtures)	County	
Exterior Painting	County	
Exterior Plumbing (incl. Septic Tanks, Lift Stations, Pumps, etc.)	N/A	City responsible for irrigation systems (incl. controllers, pumps)
Exterior Walls, Building Envelope, and other Structural Components	County	
Exterior Windows	County	
Fire Alarm Systems (incl. False Alarms)	County	
Fire Extinguishers	County	
Generators	N/A	
HVAC (incl. Filters, Repairs, and Replacement)	County	
Interior Doors (incl. Closure Devices, Frames, Molding, etc.)	County	
Interior Electrical: Main Switchgear & Breakers	County	
Interior Electrical: Outlets, Switches, Light Fixtures, Distribution Panels, etc.	County	
Interior Decoration (incl. Paint, Hanging Pictures, Shelves, TV's, Dispensers, etc.)	County	

Project: Lake Island Estates / Winter Park AQM
 Lease File #4002

Interior Plumbing: Faucets, Toilets, Sinks, Water Heaters, Appliances etc. (incl. Leaks under Slab or Inside Walls)	N/A	
Interior Windows, Glass Partitions, Window Treatments, Ceiling Tiles	County	
Irrigation Systems (incl. Controllers, Pumps)	City	
Janitorial	County	Specifically, interior janitorial.
Landscaping (incl. Debris Clean-up & Storm Drainage)	City	Including tree/vegetative trimming.
Life Safety / Fire Sprinklers / Fire Hood Suppression	County	
Locks / Key Management	City/County	
Overhead Doors / Automatic Gates (incl. Closure Devices, etc.)	County	
Parking Lot and Driveway (incl. Hardscapes)	City	
Pest Control (incl. removal/disposal of dead animals)	City/County	City responsible for external pest control. County responsible for interior pest control.
Roof	County	County responsible for all equipment/appurtenances on the roof.
Security Systems / Cameras	County	
Signage	City	Unless County requests installation of signage, in which case such signage shall be County's responsibility
Utilities – Electrical	City	If jointly metered, at County's proportionate expense. If separately metered, at County's expense.
Utilities – Internet Access, Phones, IT equipment	County	At County's proportionate expense.
Utilities – Water / Sewer	N/A	
Other:		
Other:		

Project: Lake Island Estates / Winter Park AQM

Lease File #4002

Other:		
Other:		